

9-1-1994

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Recommended Citation

Taylor, Celia R. (1994) "The Right of Participation in Development Projects," *Penn State International Law Review*: Vol. 13: No. 1, Article 3.

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The Right of Participation in Development Projects

Celia R. Taylor*

I. Introduction

The concept of popular participation is "the principal means by which individuals and peoples collectively determine their needs and priorities and ensure the protection and advancement of their rights and interests."¹ In the context of political and civil rights, popular participation encourages involvement in the formation and conduct of political institutions on all levels, as proponents of the burgeoning "governance" movement recognize.² For example, participation enforces the rights of free speech, free assembly, and free press, as those who take part in political debates and discussion share information and beliefs. In addition, popular participation enforces economic, cultural, and social rights, as participation encourages people to have a voice in activities affecting their livelihood, enabling them to protect their interests. Indeed, in a broad sense, participation even transcends the traditional categorical lines between political and civil rights and economic, cultural, and social rights. The greater political participation individuals are afforded, the greater their ability to influence activities affecting the economic, social, and cultural aspects of their lives. Conversely, the process of empowering groups to participate in economic, social, and cultural arenas necessarily strengthens their political voices as well.

Popular participation is often identified as necessary for the exercise of human rights. This belief was recently emphasized at the U.N. World Conference on Human Rights. In particular, participation was stressed in the Conference's Declaration, which states that "the human person is the central subject of human rights and fundamental freedoms, and consequently, should be the principal beneficiary and should participate in the realization of these rights and freedom."³ While these statements

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1. *Global Consultation on the Right to Development as a Human Right*, U.N. Commission on Human Rights, 46th Sess., Agenda Item 8, at 65-66, U.N. Doc. E/CN.4/1990/9/Rev.1 (1990).

2. Governance in this context is often defined as "the manner in which power is exercised in the management of a country's economic and social resources for development." See Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46 (1992).

3. *Vienna Declaration & Programme of Action*, U.N. Doc. A/CONF.157/23 (1993), reprinted in 32 I.L.M. 1661 (1993). The Declaration was passed unanimously by the 170 countries attending the Conference.

provide support for a general theory of participation, they do not distinguish among the many possible meanings of "participation" and do not squarely address how participation can be realized on a practical level.

Consequently, this article analyzes participation and its specific role in internationally-sponsored development projects of underdeveloped nations. Specifically, this article asserts that participation can and should be a required consideration in development projects. Development theoreticians have long believed that participation by beneficiaries is essential to all development projects, as participation makes project managers accountable to those they are supposed to serve. However, despite numerous calls for the inclusion of participation in development projects,⁴ no specific attempt to define participation in relation to its role in the process has been made, and no consistent method of identifying those persons entitled to participate has been crafted. Indeed, those efforts that are made to include participatory elements in project design and implementation are ad hoc and not focused. Therefore, actual participation remains limited.

This article also traces the growing recognition of the need to include participation in development projects and suggests how efforts toward participatory methods might be given practical effect by the World Bank, one of the principal financiers of internationally-sponsored development projects.⁵ Parts II and III illustrate problems which

4. Expressions of intent include a statement by Sweden's Development Minister that "[d]evelopment inputs should be designed and implemented in a way which increases the participation, responsibility and involvement of the people." Inger Axell, *SIDA's View on the Relationship Between Development Assistance and Human Rights*, in HUMAN RIGHTS IN DOMESTIC LAW AND DEVELOPMENT ASSISTANCE POLICIES OF THE NORDIC COUNTRIES 32 (Lars Adam Rehof and Claus Gulmann eds., 1989) (quoting Lena Hjelm-Wallen, Swedish Minister for Development Assistance) [hereinafter HUMAN RIGHTS IN DOMESTIC LAW]. In addition, the Development Assistance Committee (DAC) of the Organization for Economic Co-Operation and Developments' Principles for Project Appraisal incorporated provisions aimed at including participation in development project planning. One of these provisions, article 4 states that "[p]roject sustainability needs to be considered in all forms of appraisal; the following sustainability requirements and tests are essential-active involvement of local authorities and target groups including women." DEVELOPMENT ASSISTANCE COMMITTEE FOR THE ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENTS' PRINCIPLES FOR PROJECT APPRAISAL, 1988 REPORT art. 4 (1988). Article 10 provides that "[t]he target groups intended to benefit from the project and the main agents in its implementation should be carefully specified at the outset whenever possible and appropriate" and that "[t]he early specification of intended target groups should be followed, an analysis of the distributional effects of the project . . . attempt[ing] to assess the project impact on various relevant groups" *Id.* art. 10, ¶¶ 47, 48.

5. Development projects may also be funded by other sources, including loans from individual governments, private investors, or other alternate sources. This article will focus on the projects sponsored by the World Bank, however.

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typically arise when participation is not included in projects, as contrasted with the benefits accruing to those projects utilizing participation. Part IV outlines current World Bank procedure regarding the funding of development projects and suggests specific participatory mechanisms to be included in each phase of a development project's cycle to standardize and rationalize current attempts to promote participation. Finally, Part V considers the possible characterization of popular participation as a "right" by examining both textual sources and country practices.

II. Problems Caused by Lack of Participation

Practical participation in development projects is necessary to ensure that the authorities charged with promoting development are held accountable to the populations they are supposed to be serving. Only if those populations have a voice in the development process will any check on official action be meaningful. Furthermore, properly crafted participation aids in the proper identification, implementation, and sustainability of development projects. Moreover, participation by those affected both positively and negatively by projects provides an essential source of information about the expectations, behavior, and level of acceptance likely to be demonstrated by such groups. Ignoring this source of information may cause problems in each phase of the project cycle, for without participation, projects may be conceived and designed improperly, thereby impeding or prohibiting their implementation. Excluding participation also demotes the population's sense of ownership in the project, discouraging the population's long-term involvement and commitment to the undertaking. Finally, without broad popular participation many projects fail, prohibiting an equitable distribution of benefits among the intended beneficiaries and causing undue harm to those affected by the project.⁶

Many of these problems have been highlighted in empirical studies conducted by the World Bank. Focusing on specific projects, the studies are post-completion evaluations of both participatory and non-participatory projects. These studies show consistent failure or diminished effectiveness in every phase of non-participatory projects, from design and implementation to long term maintenance.⁷ Some specific examples include the Bank's South Asian Irrigation Project

6. Conrad Phillip Kottak, *When People Don't Come First: Some Sociological Lessons from Completed Projects*, in *PUTTING PEOPLE FIRST: SOCIOLOGICAL VARIABLES IN RURAL DEVELOPMENT* 325 (Michael M. Cernea ed., 1985).

7. See *id.*

which was plagued with problems of design and implementation.⁸ The project intended to promote cultivation of onions and chilies in the region, but ignored prevailing local agricultural practices that revolved around labor intensive rice farming.⁹ Local farmers were not consulted about their current practices or needs, but were expected to plant the new crops requiring approximately "220 days of labor input with peaks at rice transplanting and harvest times."¹⁰ If the farmers had been asked, they would quickly have predicted the outcome of this ill-conceived project. However, faced with conflicting demands on their acreage and time, the farmers refused to plant the substitute crops and the project subsequently failed.¹¹

Perhaps the best known and most fully documented project failure in recent World Bank history involved the Sardar Sarovar project in India.¹² The project, which was planned without meaningful consultation or involvement with local groups, called for several dams to be built to generate power for various urban industrial centers and the development of irrigated farming capacity.¹³ The problems plaguing this project are too numerous to detail. However, it was clear from the outset that certain intended beneficiaries, including farmers, engineers, and city dwellers, strongly opposed the project because they believed that it would be a technical failure with negative effects on large groups of people.¹⁴ Ultimately, many of the problems initially identified by local groups were realized and the Indian government was forced to cancel its World Bank loan because it could not comply with the environmental and resettlement standards the loan imposed.¹⁵ The Indian government would likely have proceeded with the project, despite the concerns of the groups affected, due to the perceived prestige of the project and the large capital inflows it generated.¹⁶ However, soliciting input from the population might have helped identify problems at an earlier stage, or at a minimum, might have led to more cautious implementation.

8. *Id.* at 336.

9. *Id.*

10. *Id.*

11. Kottak, *supra* note 6, at 336.

12. *India Cancels Dam Loan From World Bank*, N.Y. TIMES, Mar. 31, 1993, at A5.

13. *Id.*

14. *Id.*

15. *Id.* These conditions were considered by many local groups to be unrealistic from the start, but the failure to allow such groups to participate in the design process enabled the flawed documents to serve as the basis for initial fund flows. *Id.*

16. *India Cancels Dam Loan From World Bank*, *supra* note 12, at A5.

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The problems of project maintenance caused by a lack of participation are also demonstrated by the Kampong Improvement Program (KIP) implemented in Indonesia in the 1970s.¹⁷ This project was severely criticized by the World Bank. Specifically, the World Bank's position on the project was pronounced as follows:

The Kampong Improvement Program has been almost totally a top-down operation. . . . Neither the residents nor their elected neighborhood representatives have had any appreciable say No input from below was obtained in the planning stages Since the people were never involved or consulted from the start, they see the project as an imposed package and take a passive stance in terms of preserving its components.¹⁸

Unlike many projects where some groups benefit while some are harmed, the KIP was intended to have a positive effect for all concerned. Yet, there emerged an apathy of the intended beneficiaries.¹⁹ These feelings of alienation may in part account for their failure to maintain the facilities constructed.²⁰ Indeed, drainage canals were filled with garbage and sewage.²¹ Footpaths were collapsing around the edges, garbage was uncollected, and water stands were left broken.²²

These examples are but a few of the many that indicate that projects that do not involve participation at some level have lower overall success rates and operate less efficiently in the long run than participatory projects.²³ Conversely, there are examples of projects whose success is directly attributable to the inclusion of participation. Empirical evidence regarding these projects is not easily accessible, however, as evaluations of projects typically center on strict economic criteria.²⁴ Nonetheless, some studies of both Bank and non-governmental organization (NGO)²⁵

17. ROBERT L. AYRES, *BANKING ON THE POOR* 188-89 (1983).

18. *Id.* at 189.

19. *Id.* at 199-200.

20. *Id.*

21. *Id.* at 200.

22. AYRES, *supra* note 17, at 200.

23. See, e.g., *Sustainability of Projects: First Review of Experiences*, in REPORT OF THE OPERATIONS EVALUATION DEPARTMENT (World Bank Publication, 1985) (analyzing 25 projects five to ten years after completion and concluding that one set of underlying factors having a significant bearing on project sustainability was participation by grass-roots institutions and beneficiaries).

24. Typically, when a project fails, all "hard" economic data are considered in an attempt to diagnose the critical failure. Conversely, when a project succeeds, the "soft" factors, such as participation, are often overlooked.

25. NGOs are defined by the Bank as "groups and institutions that are entirely or largely independent of government and characterized primarily by humanitarian or cooperative, rather than commercial, objectives." WORLD BANK, WORLD BANK OPERATIONAL DIRECTIVE 14.70, INVOLVING NON-GOVERNMENTAL ORGANIZATIONS IN BANK-SPONSORED ACTIVITIES (1989) [hereinafter

projects prove that when participation is a centerpiece of the project and part of its overall goal, the project benefits.²⁶

III. Benefits Gained from Inclusion of Participation

Countless examples demonstrate that the inclusion of participatory mechanisms have a direct and positive effect on both the short and long-term effectiveness of development projects. For example, a local population in the Guaymi Region of Panama became dissatisfied with the Rural Development Project funded by the International Fund for Agricultural Development, a project which had a low success rate overall.²⁷ When funding for a new project in the region became available, concerted efforts were made to include local groups in the design phase.²⁸ In addition, representatives of the Guaymi people were included on the project preparation team.²⁹ Indeed, the change in the local people's perception of the project was immediately apparent in the name given to it by the Guaymi.³⁰ Specifically, the project was named Ngobe Project, the name they use for themselves.³¹ Such a name change evidenced the local population's pride in the project.³² This, in turn, resulted in a project that was more successful than the earlier, non-participatory one.³³

Another project, a small farmer diversification program in Costa Rica also shows the benefits of participation. The Costa Rican project was specifically structured to include participation in construction,

OPERATIONAL DIRECTIVE]. This definition therefore includes all voluntary groupings working to, among other goals, "relieve suffering, promote the interests of the poor . . . or undertake community development." *Id.* For purposes of discussion, this definition of NGO will be used although the author recognizes that it is not free from controversy.

26. The limited studies conducted suggest that while participation is not an essential element of project design and implementation, "beneficiary participation has modest but positive correlations with measures of project effectiveness, except with regard to community capacity-building; where the correlation was found to be quite strong (and positive)." *See generally*, PHILIP GERSON, WORLD BANK TASK FORCE ON POPULAR PARTICIPATION, POPULAR PARTICIPATION IN ECONOMIC THEORY & PRACTICE (1993). Further, the link between popular participation and project effectiveness and sustainability, while only weak in some areas, was strong in specific sectors including irrigation, sanitation and primary health projects. *Id.*

27. Pierre Spitz, *International Fund for Agricultural Development: Experience with People's Participation*, in WORLD BANK DISCUSSION PAPERS, PARTICIPATORY DEVELOPMENT AND THE WORLD BANK 36, 44 (Bhuvan Bhatnager & Aubrey C. Williams eds., 1992).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. Spitz, *supra* note 27, at 44.

33. *Id.*

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management, and maintenance.³⁴ In particular, the Costa Rican project involved establishing community nurseries to be run by local farmers.³⁵ These farmers were trained by the *Asociacion de los Nuevos Alquimistas* (ANAI), a professional service organization led by ecologists specializing in agro-forestry.³⁶ Monthly meetings of nursery group representatives permitted an exchange of information about experiences and encouraged cross-cultural interaction.³⁷ The feedback from local groups in the project cycle led to several changes in the project, all of which increased efficiency.³⁸ One of those changes included an increase in nurseries, after it was demonstrated that larger operations experienced better returns.³⁹ In addition, the groups altered crop distribution.⁴⁰ This method yielded more productive outputs.⁴¹

Project monitoring based on participatory techniques has also helped the long term success of the Khorat Rural Development Project in Thailand.⁴² As part of a large scale general development project, a list of fifty-two basic needs was compiled.⁴³ Satisfaction of these needs is evaluated annually by small groups from each village, which in turn report to a village council.⁴⁴ The local council both acts on the data collected and forwards it to the tambon level.⁴⁵ The tambon level then forwards this information to the district level and so on up the chain of command.⁴⁶ The inclusion of local input at the outset enabled local problems to be quickly dealt with and streamlined the process so that the more serious problems could receive more attention.⁴⁷ Additionally, this process provided higher-level decision makers with more detailed and accurate information, thus permitting decisions to be made more efficiently and resources to be targeted to the areas of greatest need.⁴⁸

34. THOMAS F. CARROLL, INTERMEDIARY NGOS: THE SUPPORTING LINK IN GRASS-ROOTS DEVELOPMENT 214-15 (1992).

35. *Id.* at 214.

36. *Id.*

37. *Id.* at 215.

38. *Id.*

39. CARROLL, *supra* note 34, at 215.

40. *Id.*

41. *Id.*

42. NORMAN UPHOFF, LOCAL INSTITUTIONAL DEVELOPMENT: AN ANALYTICAL SOURCEBOOK WITH CASES 348-50 (1986).

43. *Id.* at 350.

44. *Id.* at 349.

45. *Id.*

46. *Id.*

47. UPHOFF, *supra* note 42, at 350.

48. *Id.*

As these examples demonstrate, participatory projects produce positive benefits. However, the challenge underlying participation is to determine how participatory mechanisms should be implemented. Participation planners must make complex decisions based on numerous factors and this limits their freedom to rely on their individual expertise and experience. Some balance must be reached for every project such that participation can be encouraged to the fullest extent possible without derailing the overall project goal. This balance can only be attained if every aid donor and recipient works to standardize methods of including participation in each phase of the project cycle. Suggestions on how this might be accomplished are discussed below.

IV. Towards More Concrete Implementation of Participation in Development Projects: The World Bank as a Model

Participation should be considered an integral element of every project and thus, should be included to the fullest extent possible in every phase of the project cycle. Proposed projects not including participation should be denied funding absent special circumstances. To see how these proposals would work, the lending policies of the World Bank will be used as a model.

A. *The World Bank: An Entity to Implement Participation*

The World Bank originally consisted of the International Bank for Reconstruction and Development (IBRD), which was established by the Breton Woods Agreement to help war-damaged economies and to promote international trade and development.⁴⁹ The IBRD was originally conceived as a facilitator of foreign private capital flows and only secondarily as a direct lender when private loans were not forthcoming.⁵⁰ In practice, however, the IBRD, together with its affiliated institutions, ordinarily lend directly to governments or government-owned agencies and corporations to help in their

49. Articles of Agreement of the International Bank for Reconstruction and Development, Dec. 27, 1945, art. I, 2 U.N.T.S. 134 [hereinafter Articles of Agreement].

50. Articles of Agreement, *supra* note 49, art. IV. Article IV provides, in pertinent part:

The Bank may guarantee, participate in, or make loans to any member or any political subdivision thereof and any business, industrial, and agricultural enterprise in the territories of a member, subject to the following conditions:

.....

(ii) The Bank is satisfied that in the prevailing market conditions the borrower would be unable to otherwise to obtain the loan under conditions which in the opinion of the Bank are reasonable for the borrower.

Id.

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implementation of development projects.⁵¹ In this manner, the Bank acts less as a facilitator and more as a primary lender.

The World Bank is a useful model to fashion a framework for the inclusion of participation in development projects because of some features unique to the Bank's structure and processes. For one, Bank lending policies are constrained by its Articles of Agreement in ways that countries who lend money are not.⁵² Specifically, article IV, section 10 prohibits the consideration of non-economic factors in funding decisions.⁵³ Arguably, this provision precludes consideration of any criteria other than hard economic data. However, the impact of participation on project success indicates that its inclusion is an economic factor suitable, if not required, for consideration.⁵⁴ Even if participation is viewed as a social rather than economic criterion, it is proper to include it as one factor of the decision making process. Indeed, the Bank recognizes the link between economic and social growth and, at least in principle, is committed to their joint realization.⁵⁵

In addition to potential legal constraints, the Bank faces considerable political pressures when making funding decisions. First, the Bank's constituents are governments, many of which strongly resent what is perceived as interference with internal affairs. Thus, a desire to protect sovereign interests may lead Bank members to oppose proposals imposing conditions on loan recipients. For example, if the Bank can tell Togo that it must permit participation by local groups if it is to receive development funds, and those local groups gain stature or political voice as a result, Togo and other governments may argue that a violation of

51. AYRES, *supra* note 17, at 17. In addition to the IBRD, the World Bank group now consists of the International Finance Corporation (IFC), established in 1956 to promote foreign private investment and support the private sector, the International Development Association (IDA), established in 1960 to provide financing on concessional terms to countries unable to demonstrate that they are capable of meeting payment obligations when they become due, the International Centre for Settlement of Investment Disputes, established in 1966 to provide conciliation and arbitration services, and the Multilateral Investment Guarantee Agency (MIGA), established in 1988 to promote investment flows to developing countries.

52. Individual nations often lend money to other countries for their development. See *supra* note 5. When making funding decisions, these donor governments generally consider the "soft" factors of the borrowing countries, including the social and political factors, quite explicitly.

53. "The Bank . . . shall [not] be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions" Articles of Agreement, *supra* note 49, art. IV.

54. See *supra* parts II, III.

55. "We believe that economic progress remains precarious and sterile without corresponding social improvement. Fully human development demands attention to both." Former World Bank President Robert S. McNamara, Remarks to the World Bank Board of Governors at Copenhagen, Denmark (Sept. 21, 1970).

sovereign rights has occurred. The resistance to participation may be particularly strong to the extent that participation is understood as having long-range effects on internal political structures and power paradigms of recipient countries.

Without diminishing the difficulties these political pressures present, changes in Bank policies over the past decade indicate that such problems can be overcome. The combination of (1) increasing international pressure to include participation in the project cycle,⁵⁶ (2) the growing acceptance of a broad definition of participation as necessary to hold managers accountable to projects, and (3) empirical data showing participation's economic effectiveness and growing acceptance by the Bank, all indicate that the nascent moves towards inclusion of participation can be expanded.

Logically, the Bank has the ability to take the lead on the issue of participation. First and foremost, the Bank is in the business of development, committing significant resources towards development projects.⁵⁷ The Bank is commonly viewed as one of "the world's most powerful institutions."⁵⁸ Most important, the Bank itself recognizes its unique position to affect the course of development aid and has indicated a willingness to play a leadership role.⁵⁹ Moreover, the Bank's experience and current practices make it well-positioned to adopt participatory mechanisms itself and promote these tools to others. The World Bank monitors domestic conditions through on-going country

56. It is important that the pressure for change come from the international community at large. Proposals for change without broad-based support have little chance of success at the Bank, as the U.S. Executive Directors were continually reminded when they tried over many years to increase the transparency of internal Bank processes to no avail. Changes in this area are now being implemented at the Bank, but only because the United States was able to convince others to support its program.

57. On June 30, 1991, the IBRD's outstanding loans totalled \$91 billion and IDA's total was \$45 billion. While not all of these amounts were in development loans (some were given as structural adjustment and other loans), project finance is the Bank's main focus and accounts for the bulk of its lending. See INTERNATIONAL MONETARY FUND, 1992 ANNUAL REPORT, (1992); INTERNATIONAL MONETARY FUND, 1991 ANNUAL REPORT (1991).

58. Clive Crook, *Sisters in the Wood: Distant Relations: The IMF and the World Bank*, ECONOMIST, Oct. 12, 1991. Although private investment may be growing in importance vis-a-vis Bank activity, the Bank, together with the International Monetary Fund, serves as a gate-opener for funding. If it is not willing to lend to a country, the sources for private funding diminish accordingly. *Id.*

59. The World Bank's experience over the last forty-five years, coupled with its access to financial resources and information, have clearly made it the international institution best equipped to deal with the complexities of development issues. Its successes and failures should in particular qualify it to continue to address these issues with increased effectiveness in the future

.....
IBRAHIM SHIHATA, THE WORLD BANK AND A CHANGING WORLD (Tschofen & Parra eds., 1991).

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dialogues and field missions which include consultation with local non-governmental organizations.⁶⁰ This practice and current knowledge of country conditions, although perhaps limited in scope, make the Bank well-equipped to confront the problems of target population identification and interest balancing discussed below.

Additionally, adding participation as a standard project element will necessitate changes in current practices, and the Bank has shown willingness to adopt new techniques. Such techniques include incorporating new criteria into loan decisions when they are identified by the international community as important.⁶¹ This adaptability is also evident in the Bank's increasing attention to human rights concerns like women's issues⁶² and tribal peoples' rights.⁶³

The World Bank is certainly able, and according to its own pronouncements, willing to lead the international community in formulating and implementing participatory development.⁶⁴ For some time, its general pronouncements of good intention have taken the place of action. The current is shifting, however, and the movement must be maintained and encouraged. To do so, the Bank's stated goal of promoting participation must be given practical effect.

B. World Bank Practices: Current Policies

In order to better understand how the Bank could incorporate specific participatory requirements and mechanisms into its lending policies, a brief overview of the Bank's current lending practices for development projects is necessary.⁶⁵

1. Project Identification and Preparation.—Typically, development projects are brought to the attention of the Bank by the borrower government as part of an on-going dialogue between them. Often,

60. See *infra* part IV.B.

61. For instance, the Bank now conditions loans in areas such as agriculture, energy, transportation, and industry in compliance with environmental considerations. See Shihata, *supra* note 59, at 148.

62. Although the Bank does not directly acknowledge that it is factoring human rights concerns into its lending policies, it has begun to do so by couching the discussion in economic rubric. See e.g., WORLD BANK, WORLD BANK OPERATIONAL DIRECTIVE 4.10, WOMEN IN DEVELOPMENT (Proposed Draft).

63. See, e.g., WORLD BANK, WORLD BANK WORKING PAPER, TRIBAL PEOPLES AND ECONOMIC DEVELOPMENT, HUMAN ECOLOGIC CONSIDERATIONS (1982).

64. See *supra* notes 49-63 and accompanying text.

65. This overview is intended to be descriptive only. The actual processes followed by the Bank differ depending on the personnel involved but the general structure of the project cycle and the formal documentation requirements are constant.

however, the Bank may conduct "identification missions" to locate projects or stimulate their development.⁶⁶ When a proposal is initiated by a government, the Bank becomes involved in the process as early as possible to avoid formulations of projects that will ultimately be rejected.⁶⁷ Interactions at these preliminary stages are primarily with the planning and technical ministries and agencies of the borrowing countries, both with regard to the continuing dialogue and the specific project under consideration.⁶⁸ If the personnel in these agencies lack the requisite expertise to carry out any part of the proposed evaluative or design process, the Bank may require that consultants be hired by the government to provide the skills necessary, just as governments currently are required to hire specialists to assist with implementation when needed.⁶⁹

2. *Project Appraisal*.—After a potential project is identified, it is appraised with respect to economic, technical, organizational, managerial, operational, and financial factors.⁷⁰ If relevant, additional elements, such as environmental impacts of projects, are also included in appraisal reports.⁷¹ The end result of the appraisal process is a Project Appraisal Report (PAR) prepared by missions sent to the field to determine feasibility. These missions are primarily conducted by Bank staff, but when necessary, are done by specially hired experts from the staffs of other UN Agencies, including, among others, the UN Food and Agriculture Organization, World Health Organization, and Consultive Group on International Agricultural Research.⁷²

The substance of a PAR varies depending on the type of project involved, but it is intended to cover all relevant considerations, including economic feasibility, impact on target populations, and mechanisms for implementation.⁷³ The guidelines established in the PAR typically dictate how all future implementation, supervision, monitoring, or evaluation of the project will be carried out.⁷⁴ In essence, it is viewed

66. AYRES, *supra* note 17, at 44.

67. WORLD BANK GROUP POLICIES AND OPERATIONS (1974) [hereinafter POLICIES AND OPERATIONS].

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. POLICIES AND OPERATIONS, *supra* note 67.

73. *Id.*

74. *Id.*

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as establishing "the parameters within which all subsequent project work proceeds."⁷⁵

3. *Project Supervision and Funding.*—After completion of all appraisal reports, formal negotiations are conducted between the Bank and the borrower government.⁷⁶ Funding arrangements are made and the legal documents necessary to implement the plan are presented to the Bank's Executive Directors for approval.⁷⁷ Upon approval by the Directors, initial funds are disbursed and implementation formally begins. Throughout the project, the Bank requires that records be kept and progress reports be submitted.⁷⁸ These reports are supplemented by Bank visits to the project to gauge progress and ensure that all loan conditionalities are being satisfied.⁷⁹ Disbursement of additional funds may be conditioned on the satisfaction of certain conditions, including compliance with such conditionalities and submission of proper documentation of expenditures.⁸⁰

4. *Project Audit and Evaluation.*—At the completion of each project⁸¹ two main documents are prepared. The first is a Project Completion Report (PCR), written by the borrowing country with assistance from the responsible division of the Bank.⁸² The other is a Project Performance Audit Report (PPAR), which compares the project's objectives to its achievements.⁸³ This document is prepared by an independent department of the Bank, the Operations Evaluation Department (OED) is given to the borrowing government.⁸⁴ Additionally, Impact Evaluation Reports (IER) are prepared for selected projects five or more years after project completion.⁸⁵ These reports are more broadly focused on the general social and economic effects of the

75. R. AYRES, *supra* note 17, at 45.

76. POLICIES AND OPERATIONS, *supra* note 67.

77. As provided for in the Articles of Agreement, the board consists of 22 Executive Directors. See Articles of Agreement, *supra* note 49, art. V. Five are appointed by the five members having the largest number of shares of capital stock (currently the United States, Japan, Germany, France and the United Kingdom), while the rest are elected by the governors representing the other member countries. *Id.* All loans must be approved by the Executive Directors. *Id.* In practice, if a loan reaches the Directors, its approval is virtually guaranteed due to the extensive preparatory work done prior to this stage.

78. POLICIES AND OPERATIONS, *supra* note 67.

79. *Id.*

80. *Id.*

81. It is not clear when or how a project is deemed complete.

82. POLICIES AND OPERATIONS, *supra* note 67.

83. *Id.*

84. *Id.*

85. *Id.*

project, rather than on the strict economic criteria that are the focus of PPARs.⁸⁶

C. Project Cycle: Specific Suggestions to Promote Popular Participation

The specific mechanisms prescribed below provide a standardized framework for the implementation of participation. Moreover, these mechanisms can be integrated into current Bank practices with minor operational changes. Even more significant, the mechanisms described below directly address the two fundamental obstacles currently plaguing participatory efforts. The development of participation has been hindered by both a piecemeal implementation of participation and the lack of historical records of participatory projects upon which proposed projects can rely. The proposed mechanisms attempt to reconcile these problems by implementing a standardized system of participatory procedures. While every project will use different participatory procedures, there will always be some participation utilized. Flexibility in application will be needed, but the general approach will be consistent.

1. *Identification and Preparation.*—As described above, Bank-funded projects typically are identified in a formal proposal from a borrower government as part of the on-going dialogue between the borrower and the Bank.⁸⁷ This approach provides no incentive for the government to solicit the views of the population to be affected by the proposed project. Indeed, this practice allows projects to be imposed from the top-down. In addition, this practice allows projects to be based predominately on “hard” economic criteria, such as rates of return and the extent of available funding. Missing from this calculus are “soft” variables that are learned from the grass-roots bottom, including the historical experience of the populations with other projects and information about levels of acceptance likely to be demonstrated by the groups and various others. This top heavy method of analysis may lead governments to focus on ill-conceived “prestige projects” that generate large capital flows into the country without adequately considering the negative impact such projects may have. Arguably, this occurred with the Sardar Sarovar dam project.⁸⁸

The inefficiencies resulting from self-interested governmental project identification might be decreased if a focus on participation is

86. *Id.*

87. See *supra* part IV.B.1.

88. See *supra* notes 12-16 and accompanying text.

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incorporated into this phase. One specific mechanism to do this requires the submission of a Participatory Impact Assessment Report (PIAR) by the borrower government. This report would provide precise identification of the target groups affected by the proposed project, including both beneficiaries and those who might be harmed, and a detailed statement of what participation is envisioned for these groups.⁸⁹ This report would serve as an independent assessment that would force governments to focus on the issue of participation. Although the Bank's current Project Appraisal Report (PAR) is currently required to contain some analysis of impact on target populations, it is but one factor among many and is not viewed as very important.⁹⁰ Like environmental issues, now the subject of an independent appraisal, participation will only become a valued element of the planning process if its role is emphasized through this requirement.⁹¹

(a) Identification of Populations: Threshold Questions

(i) Who Is Identified?—In attempting to identify target populations of Bank projects, planners begin by determining the broad categories of groups which may be affected by the project. Unfortunately, these categories may not be instantly evident. The first consideration in identifying populations whose participation might be appropriate is the nature of the proposed project. Three types of projects can be envisioned, each with differing impacts. First, a project might be quite localized, with immediate impact only on the project environs, such as a local agriculture project. The second type of project includes works such as dams or power plants which have impact on the immediate project environs and also have downstream effect on populations removed from the project but whom will benefit from the project nonetheless. The final category of projects involve those that are designed to have national

89. Many have called for conditioning Bank loans on the results of "human rights impact assessments" addressing "the possible adverse effects of the proposed activity . . . on the full enjoyment of human rights by any sector of the national society . . . and the establishment of participatory mechanisms for monitoring and evaluations." *Question of the Realization of the Right to Development: Global Consultation on the Right to Development as a Human Right*, U.N. ESCOR, 46th Sess., Agenda Item 8, U.N. Doc. E/CN.4/1990/9/Rev.1 (1990). The participatory impact assessment this article suggests would not need to include an analysis of the impact of the project on all human rights but would be limited to participation. While this article's author is also in favor of a more extensive impact report of this kind, serious logistical problems must be addressed before a full-fledged report will be practicable.

90. See *supra* part IV.B.2.

91. See *id.*

or global impact and include programs such as country wide infrastructure projects.

Within these broad characterizations, further identification decisions must be made. Some projects may seem to have only local impact, but in fact, affect a broader spectrum of groups. For instance, if relocation of peoples is required, the population living in the area receiving those dislocated must be included as a population affected by the project. Similarly, if resources are to be taken from one region to implement a project in another, the effect on those living in the area to be depleted must be considered.

Once broad categories of persons are identified as the "target populations" of a project, the diverse status and interests of groups within those categories must be considered. Projects may have widely divergent effects on groups occupying different economic, cultural, and social strata. For instance, a project to build and operate schools in a rural African community will affect all community members in some way, but how it will do so will depend to some extent on occupation, race, gender, and social status. Project planners must carefully identify the numerous subcategories within each broad target population if true participation is to be extended to all groups.

(ii) *Who Makes the Identification?*—Further complicating this process is the question of whom is entitled to make the identification of the target populations. The power to categorize a group as one affected is the power to recognize the interests of the group and to grant it standing in the development process. Development projects invariably require some level of governmental involvement. Therefore, governments are likely candidates to identify the target populations. However, relying solely on governments to fulfill this task presents problems. Governments may make different identification decisions than would the groups themselves. If a government does not want a particular group to gain a voice or does not consider that a group is entitled to speak, they can omit that group from those identified or can include the group in a larger category that masks particularized concerns.⁹² Constraints common in a patriarchal society may prevent the government from identifying women as an affected group, either because of innate cultural biases or because they fear giving women a voice.⁹³

92. See *supra* pp. 77-78.

93. For example, women in Islamic societies may not have their needs addressed due to their low position within that community.

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Furthermore, government efforts at identification, even if well intentioned, may be hindered by a lack of knowledge of the social structure of a group because of the group's distance from the people involved. The persons affected may come from different villages or tribal units and consider themselves distinct populations with differing interests.⁹⁴ Lumping these disparate groups together diminishes each group's ability to have its voice heard and may create additional problems by failing to accommodate individual group concerns. For example, if rivalry exists between various groups, a relocation plan that places them together is bound to foster increased tension. Furthermore, differing customs and practices may not be accommodated if not considered separately.

An alternative to governmental identification of target populations is identification by the World Bank. However, the Bank is typically removed from the scene and lacks the knowledge necessary to determine the identification criteria set forth above.⁹⁵ The World Bank could seek the help of groups in the area where the project is to be implemented, as these groups would have the requisite knowledge. Yet, the Bank must be conscious of the political and self-interest of such groups. In this regard, there is a danger that donors removed from the field cannot understand the power paradigms of the area and may mistake the most vocal group for the most representative or important. For example, if a project is designed to put mechanized production capacity in an area, trade unions representing workers capable of operating the machinery will likely be vocal in support. Those unskilled workers whose jobs will be lost may be less organized and less able to make their voices heard. The unequal powers of the groups affected could cause an aid agency to conduct its cost/benefit analysis of the project on the basis of inaccurate or incomplete knowledge.

The Bank could reduce this problem by working with local NGOs⁹⁶ to gain a more accurate perception of the interests involved. Even then, however, the Bank must be careful that the groups they contact to aid in

94. This situation is not unusual in African and Indian societies where village and tribal allegiances are strong.

95. Another problem with having financial aid givers identify target populations arises when the aid giver is an individual country rather than the World Bank. Individual countries often provide assistance to the development of underdeveloped nations. See *supra* note 5. However, donor governments tend to be constrained by their own political interest, including their relationship with donee governments. Thus, an identification of target by a donor government may be influenced by the donee government.

96. See *supra* note 25 and accompanying text.

identification are truly representative and are not simply the local elites.⁹⁷ While the support of these elites may be essential to the project's success, if an accurate assessment of the needs and desires of the entire population is made, it is necessary to get the input of a broad spectrum of the population, including traditionally disadvantaged groups and minorities, whose voices are often lost in the clamor.⁹⁸

A third method of identification of target populations is self-identification by groups that perceive that a project will affect them. In theory, this method is the most effective means of ensuring that all interested parties are heard. However, some populations may consider any contact with governmental organizations interference and therefore chose not to identify themselves. This method also does not solve the problem that groups must identify themselves to the parties wielding control over the project who may withhold recognition for any of the reasons stated above. Finally, self-identification raises a difficult line drawing problem: It is difficult to identify how many people constitute a "group" and what impact on this group is considered substantial and what is not.

Use of a PIAR will not instantly solve these problems, but will ensure that actual attention is paid to the issues. Although this article directs that formal identification of target populations be done by donee governments, the Bank must nevertheless insist that self-serving classifications will not be permitted. Governments must be encouraged to give notice to the relevant areas, to permit affected groups to request inclusion in the process, and to work with local organizations to ensure full and accurate identification of all factions. A subsidiary benefit of requiring identification at this preliminary phase and insisting on genuine efforts to reach all affected populations is that this method will help to alert those groups that a project is under consideration. The sooner populations become aware of projects, the sooner they, or groups representing their interests, can begin to make themselves heard.

To ensure that the difficulties of target population identification are considered adequately, the PIAR should include an explanation of the methodology used in identifying target populations, together with the precise categories. This explanation will enable the Bank and outside

97. See e.g., James C.N. Paul, *International Development Agencies, Human Rights and Humane Development Projects*, 17 DEN. J. INT'L L. & POL'Y 67, 102 (1988).

98. See, e.g., WORLD BANK DISCUSSION PAPERS, PARTICIPATORY DEVELOPMENT AND THE WORLD BANK 2 (Bhuvan Bhatnager & Aubrey C. Williams eds., 1992) ("While participation should include all stakeholders . . . special attention needs to be paid to women, indigenous people, and the very poor.").

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actors privy to the information to determine whether suitable efforts were made to include all groups to be affected and will provide empirical data that can be used in preparing future reports.

(b) *Specification of method of participation.*—The PIAR must also specify how the participation of the identified groups will be promoted. In order to identify a workable level of participation, the scope of the project must be considered. Both its macro- and micro-economic effects must be evaluated for their effect on the relevant populations. Presumably, this analysis is currently done in the course of preparing the PAR, but without a specific focus on the issue of participation.⁹⁹

Clear demarcation of the scope of the project will enable better identification of what level of participation is appropriate. When a project is to have an impact on a specific sector of a population, that sector should be consulted about those factors within their sphere of knowledge. What factors will be addressed depends upon both the characteristics of the groups (such as homogeneity, education, and skill levels) and the nature of the project. For example, while designing an agricultural program, it would be appropriate for project planners to consult each group of local farmers on the issues uniquely within their knowledge, such as: (1) local planting practices; (2) appropriate technologies for the area; (3) current methods of coordinating agricultural efforts;¹⁰⁰ (4) historical experience with other projects, if any; and (5) the compatibility of the proposed project to the current use of the land. However, the local farmer's input into more global issues, such as the determination of prices or subsidies to be paid, the allocation of resources on a project-wide basis, and general administrative concerns, may not be as useful.

In an industrial project, issues suitable for popular participation might include: (1) identification of social practices affecting work patterns, (e.g., Are men and women permitted to work together? Are there class distinctions that dictate who will be willing to fill certain positions?); (2) assessment of the availability of human resources, (e.g., the skills the community currently has, the training that would be most beneficial); and (3) the identification of current work practices, if relevant (e.g., the length of working day and week, any religious or other considerations to be taken into account). Issues less amenable to direct

99. See *supra* part IV.B.2.

100. That is, project planners should ascertain to what extent local farmers make efforts to coordinate their agricultural endeavors.

popular participation in industrial projects may include: (1) calculations of a project's impact on the country's balance of trade; (2) input/output analysis and goal setting; and (3) the determination of wage levels to be paid.¹⁰¹

(c) *Governments' fulfillment of this obligation.*—Until PIARs become standard, borrower governments may lack the expertise necessary to prepare these reports. Therefore, these governments should be encouraged to work closely with NGOs in researching and drafting these assessments, just as they are now required to seek help when they lack the expertise needed to properly assess the technical or economic implications of a project.¹⁰²

NGOs are often better situated to identify, clarify, and represent community needs and desires than are the relevant governmental agencies. Thus, NGOs involvement in project identification and implementation would, in many cases, provide a channel of information that larger governmental bureaucracies cannot access. In fact, Bank policy currently states that use of these groups should be encouraged as an effective means to "reach poor communities and remote areas," to "promote local participation," and to "identify local needs [and] build upon existing resources."¹⁰³ The Bank's Operational Directive discussing collaboration with NGOs stresses the need to involve these groups in each phase of the project cycle, including identification.¹⁰⁴ To date, however, this method has not been fully successful in achieving this goal.¹⁰⁵

Reliance on NGOs may not always be possible or advisable. There may be areas without operational NGOs, or where existent NGOs are

101. This determination also may need to consider nationwide conditions.

102. OPERATIONAL DIRECTIVE 14.70, *supra* note 25.

103. *Id.* ¶ 6.

104. *See id.* Collaboration with NGO's identifying types of collaborations should be sought in every phase of the project cycle ranging from analysis of development issues and project identification to monitoring and evaluation.

105. Despite the unique ability of NGOs to contribute at the identification phase, a study of all Bank projects from 1973-88 showed that only 6% involved NGOs in any phase and significantly, only 12% of those projects used NGOs during the design phase. No separate statistics are available isolating the identification phase. Lawrence Salmen & A. Paige Eaves, *Interactions between Non-governmental Organizations and the World Bank: Evidence from Bank Projects* in NON-GOVERNMENTAL ORGANIZATIONS AND THE WORLD BANK 134 (Samuel Paul & Arturo Israel eds., 1991) [hereinafter NGOs AND THE WORLD BANK]. While there are indications that post-1988 projects show a marked increase in the role of NGOs, it is still running at less than 50%. *See* David Beckman, *Recent Experience and Emerging Trends, in NON-GOVERNMENTAL ORGANIZATIONS AND THE WORLD BANK* 186-87 (Samuel Paul & Arturo Israel eds., 1991).

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unable or unwilling to present a balanced view.¹⁰⁶ In those areas, much greater effort will be required to identify populations and outline participatory mechanisms to be implemented. Such efforts can be made however, and requiring a PIAR will ensure that they are.¹⁰⁷

2. *Project Appraisal*.—The first decision to be made in this phase involves whether the proposed project should be pursued. As discussed above, this analysis must include consideration of the views of the groups to be affected. The Bank and the borrower government must jointly conduct a cost/benefit analysis of the project, including an analysis of the project's impact on the populations identified in the PIAR. While this analysis may not yield the outcome each of these populations desire, if each group's positions are considered at the outset, a more informed and accurate assessment of the project can be made.

To ensure that all identified groups are heard, new methodologies of project appraisal should be standardized. First, the mission sent to the borrower country to gather information for the PAR should include in its ranks sociologists or anthropologists from the Bank staff or hired specifically for the project. Adding this expertise to the mission will increase the ability to make the sociological evaluations relevant to participation and will provide a balancing perspective to the view of "technical experts, who remain ignorant of the sociostructural and cultural dimensions of technical production processes."¹⁰⁸

Additionally, the mission should initially attempt to add to its ranks a member or members of the identified groups to serve as a liaison between the mission and the community. As mentioned, some affected groups may not want to participate in this process due to a perception that any development imposed from the outside constitutes unwarranted interference or because they fear calling the attention of a potentially hostile government to themselves. In those situations, a refusal to participate should be viewed as an expression of the group's feelings on the viability of a project as a whole. If the project is implemented

106. NGOs are not always free from political or other influences which color their presentations of information. For an interesting account of a political battle over popular representation waged between a NGO and local governmental sponsored organizations see AYRES, *supra* note 17, at 186-87.

107. For some practical suggestions on how to properly identify target beneficiaries and solicit the input of non-power groups see Spitz, *supra*, note 20, at 36. See also STEPHEN HELLINGER, ET AL., AID FOR JUST DEVELOPMENT: REPORT ON THE FUTURE OF FOREIGN ASSISTANCE at app. A (1988).

108. Michael M. Cernea, *Sociological Knowledge for Development Projects*, in PUTTING PEOPLE FIRST: SOCIOLOGICAL LESSONS FROM COMPLETED PROJECTS 18 (Michael M. Cernea ed., 1985).

despite the silent objection of these groups, special care must be taken to minimize the impact on these groups to the greatest extent possible.

The mission team should make concerted efforts to draw on local sources of information in its fact-gathering procedures. These efforts would be aided by early and widespread notification of the proposed project and by consultation with the community member of the mission, as well as area NGOs, about effective means of soliciting input. Many of the issues on which the input of affected groups is needed will have been identified in the PIAR. The key in this phase is to ensure that this process is put into practice. Preliminary results of surveys and other data gathering techniques should be made available to target populations for comment and corroboration.¹⁰⁹ This consultation would not only give the population an early sense of having an interest in the project but could aid in the accuracy of data collection as well as improve the overall efficiency of projects.

When field research is completed, the PAR should respect the views of all affected groups to the fullest extent possible.¹¹⁰ Clearly, where projects will help some and harm others, not all groups can be satisfied. The level of dissatisfaction can be reduced if those groups to be harmed are consulted as to how the negative impact could best be mitigated. At the very least, these groups should be offered suitable compensation.

Furthermore, the PAR should be crafted to allow for maximum flexibility in the project cycle, based on the "learning process approach."¹¹¹ PARs are currently viewed as creating a fixed blueprint for a project, establishing "watertight compartments between . . . planning, implementation and project evaluation."¹¹² This compartmentalization of responsibilities is inefficient and unproductive. Project design needs to allow for on-going modifications resulting from consultation and information sharing with target populations and NGOs. Additionally, project design needs to allow for alterations to meet problems or differences arising as implementation proceeds. For example, if the PAR for an agricultural project calls for a land tenure

109. See Louise Fortmann, *Taking the Data Back to the Village*, 3 RURAL DEVELOPMENT PARTICIPATION REV., Winter 1982, at 13-16.

110. See *supra* part IV.B.2.

111. This phrase was introduced in development terminology by David Korten in *Community Participation and Rural Development: A Learning Process Approach*, in 40 PUBLIC ADMINISTRATION REV. Sept./Oct. 1980, at 480-511. This approach is currently being used by Bank personnel as a model for the increasing participatory development.

112. Fazle Abed, *Bangladesh Rural Advancement Committee: Promoting Popular Participation*, in WORLD BANK DISCUSSION PAPERS, PARTICIPATORY DEVELOPMENT AND THE WORLD BANK 31 (Bhuvan Bhatnager & Aubrey C. Williams, eds., 1992).

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system based on individual ownership, the PAR should not be so rigid that it refuses to recognize alternatives. If, during the course of the project, collective organizations are formed that want to hold land, the PAR should accommodate these different structures. Similarly, if a project sets production targets which prove unrealistic, the participants should provide more realistic goals as the project progresses. The Bank occasionally tries to incorporate flexibility in project design¹¹³ and this approach should be standardized. Not only will flexibility increase short term project efficiency, it will also add to the population's pride in the project, therefore supporting long term success.¹¹⁴

3. *Supervision and Funding.*—Supervisory efforts should build on the dialogue with the target populations in the project identification phase and should continue to solicit input from these groups. The community member or members of the identification mission should be retained in an advisory capacity. Supervision should include attention to possible changes that would enhance the project. Such supervision is consistent with the goal of learning from the process, rather than simply serving to monitor whether the initial guidelines of the PAR are being satisfied.

Supervision should also regulate the methods of participation by the population identified in the PAR to ensure their utilization. If the initial expectations of participation that were included in the implementation of the project prove unrealistic, efforts should be made to find alternatives. These efforts can be encouraged by conditioning the disbursement of project funds on documentation of participation, or by making good faith efforts to solicit the same. For example, if the PAR calls for training twenty women to serve as health care providers in rural clinics, funds to support workshops conducted by these women could be conditioned on proof that they have been trained and are ready to provide services. Because funds typically are disbursed throughout the life span of the loan, and are conditioned on observance of loan criteria, this requirement will not require substantial alterations to Bank processes and will help keep the success of participatory efforts at the forefront of the Bank's agenda.

113. For example, the Philippines Communal Irrigation Development II Project (FY 90) was designed with loose time targets and set specific criteria only for the first phase. Bhuvan Bhatnager, *Participatory Development and the World Bank: Opportunities and Concerns*, in WORLD BANK DISCUSSION PAPERS, PARTICIPATORY DEVELOPMENT AND THE WORLD BANK 16 (Bhuvan Bhatnager & Aubrey C. Williams eds., 1992).

114. Projects such as the Ngobe Project which evoke the pride of the local population in their participation have proven to be more successful than other non-participatory projects. See *supra* notes 27-33 and accompanying text.

Funding practices can be further be modified to support participation through increased efforts by the Bank to channel monies to local groups or intermediaries, rather than giving all the funds directly to the government. This requires more substantial changes in current practice than does the conditioning of disbursements as discussed above, but the seeds of the idea are present.¹¹⁵ This approach requires great care in the selection of intermediaries and some increased flexibility in procurement decisions, but supports participation by including populations in the process and by encouraging transparency in funding practices. Transparency as to both the magnitude and direction of fund flows should be encouraged in all projects, even when all funds flow directly to governments, in order for target populations to develop realistic expectations and serve as monitors of the project.

4. *Audit and Evaluation.*—As currently structured, project evaluation tends to be from the top down, or “etic.”¹¹⁶ PCRs and PPERs are written by borrower governments and Bank staff and focus primarily on quantitative economic indicators.¹¹⁷ This type of evaluation is necessary and should continue, but should be complemented by “emic” or qualitative evaluation, which are designed to solicit the views of those affected by the project.¹¹⁸ With emic or qualitative evaluations, the groups identified as target groups in project documents should be consulted during and post-project. This permits rapid identification of problems that might otherwise go unnoticed and therefore uncorrected, increasing the overall efficiency of projects.¹¹⁹ There is also some evidence that emic or qualitative evaluation provides

115. This approach is used by the Bank's Health Development Project in the Philippines, where the community health program is carried out primarily by local NGO's which receive direct funding. Obviously, any conditions imposed on governments for disbursements, including all reporting requirements, should apply to non-governmental groups receiving funds.

116. The term “etic” refers to evaluative techniques conducted by “outsiders” representing reality in terms readily accessible to those who are not part of the group being observed. “Emic” evaluation attempts to portray the reality experienced by the group affected. See Norman Uphoff, *Monitoring and Evaluating Popular Participation in World Bank-Assisted Projects*, in WORLD BANK DISCUSSION PAPERS, PARTICIPATORY DEVELOPMENT AND THE WORLD BANK 135 (Bhuvan Bhatnager & Aubrey C. Williams ed., 1992) [hereinafter *Monitoring and Evaluating Popular Participation*].

117. See *supra* part IV.B.4.

118. *Monitoring and Evaluating Popular Participation*, *supra* note 116, at 135.

119. For example, in one post-project evaluation conducted for an African irrigation project, villagers quickly identified an array of technical problems which might not have been spot-lighted if only officials far removed from the project had been consulted. The villagers also indicated that they were aware of the problems much earlier in the project cycle, indicating the need to ensure early and continual evaluation efforts designed to solicit this knowledge. See Kottak, *supra* note 6, at 354.

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better statistical information about projects than does top-down reporting.¹²⁰

Furthermore, involving the population in the evaluative process increases the population's interest in the project's success. If groups are made to feel accountable for the project, their long term commitment to the maintenance of the effort will increase. Perhaps if the residents at the Kampong Improvement Project had been consulted during and after the "improvements" were installed, they would have felt less alienated by the process and the project would have enjoyed greater success.¹²¹ Consequently, the emic approach to monitoring and evaluation¹²² should be used by the Bank for its internally prepared project reports and required of borrower countries when they prepare their reports for submission to the Bank.

The Bank can also support efforts to encourage participation by making the PCRs and PPERs completed for each project accessible to the public, not only in its central repository in Washington D.C.,¹²³ but in the countries and the regions where the projects occur. After all, the base for all participatory efforts is shared knowledge. Just as the Bank must capitalize on sources of information within the communities where projects are located, it must enable those communities to benefit from the knowledge gained during the project cycle. Dissemination of this information to the relevant populations is a simple matter if these communities remain involved throughout the project cycle. If they do not, they must be consulted post-project to ensure that proper evaluation of the project's impact has been reached. Once reached, information can be distributed.

In addition to being disseminated to the affected populations, information about the project as a whole and the success or failure of specific participatory mechanisms should be given to the relevant NGOs. As groups with long-term presence in the community, NGOs provide a vital link between the populations involved, donor governments, and aid agencies.¹²⁴ NGOs are well situated to serve as clearing houses for data

120. See GREEN REVOLUTION? TECHNOLOGY AND CHANGE IN RICE GROWING AREAS OF TAMIL NADU AND SRI LANKA 96 (B.H. Farmer eds., 1977) (describing how self-interest caused officials to over report planting results while the same results were reported accurately by the farmers involved).

121. See *supra* notes 17-22 and accompanying text.

122. Some of these techniques are discussed by Norman Uphoff, *supra* notes 42, 116.

123. Currently, most Bank documents are available to the public at the Commerce Department library in Washington, D.C. Documents are filed at the library only after formal approval of a project is given by the Executive Directors. Thus, while project documents may be useful to groups seeking to influence future projects, they are not available early enough in the project cycle to permit any changes to be made in the project itself.

124. See *supra* note 25.

collected over the course of multiple projects. Their role in the effort to standardize and rationalize participatory projects can be greatly enhanced if they receive full information.

These suggestions of project cycle specific participatory mechanisms to be included in World Bank development projects provide merely a primary starting point to standardize efforts in the area. They do not solve all of the difficult problems project planners will confront, but they require that the issue receives the attention it needs and deserves. Within the Bank, these mechanisms do not require major changes in operational policies, although they may require significant changes in staff attitude.

V. Beyond the Bank: The Complexity of Large Scale Participatory Projects

The above discussion suggests concrete ways to include participation in World Bank lending policies. Given the nature of Bank development projects, most of those considered are small scale and affect relatively localized populations. Of course, some Bank projects and many other donor projects operate on a much larger scale and affect broader categories of populations. However, the increased scope and impact of large scale projects does not reduce the need to include participation in all phases of the project cycle. Yet, when projects go beyond a local setting in either implementation or impact, further issues concerning the practicability and desirability of including participation must be addressed.

A. Identifying Target Populations in Large Scale Projects

One type of large scale project is designed for large-scale implementation. Examples of this type include global health care programs of the type instituted by the World Health Organization.¹²⁵ Projects of this kind must factor in a vast number of interests relative to diverse populations. Local customs towards health care generally will vary radically from region to region. No one group can adequately serve as a model. The increased scope of these projects adds countless permutations to the calculation of what groups should be identified as target populations and how their participation can be used most effectively.

Also troublesome are those projects which are centered in one area but affect a far wider range of populations. For example, a development

125. WORLD HEALTH ORGANIZATION CONST. reprinted in 1946 U.N.Y.B. 793, U.N. Sales No. 1947.I.18.

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plan calling for deforestation of Brazil's rainforest affects the population of Brazil, but also has ramifications for the global community.¹²⁶

Complex issues are raised when a project directly affects only one region but has potential indirect effect on the world community. It must be asked whether groups outside the country where a project is centered are entitled to participate in its planning or if their environment may be affected.¹²⁷ It must be decided how direct a linkage between project and effect should a group be required to demonstrate in order to be afforded a voice in the process. A project yielding immediate benefits to a host country may have long term negative effects to other regions. For this reason, it is possible that the children living in those other areas should be considered a target population if their environment or livelihood will be affected by a current project. These and countless other variables might be considered relevant to a determination that a group constitutes a "target population."

B. Determining Appropriate Participation for Large Scale Projects

Even more problematic is *how* to include the participation of such disparate groups, namely how to determine what weight each identified population's voice should be given. The overriding concern of any development project must be the concrete result. Therefore, desire to incorporate participatory mechanisms will not take priority over successful project implementation and maintenance. Instead, careful balancing is required to ensure that the manner and level of participation is appropriate for the type of project in question so that the interests of the identified target populations can be respected to the fullest extent possible. For instance, Brazil may have very different ideas about the suitability of a rainforest development project than do countries or other entities which will not benefit economically from it, but may be harmed due to depletion of the ozone or other long-term environmental consequences. Perhaps non-host country parties should be permitted to voice their interests in the development process. Perhaps they should be granted substantial power over the course of the project. A clear conflict

126. Global concerns with such a plan would include, among others, overall environmental impact of the project in terms of worldwide environmental alterations, preservation of total rain forest acreage worldwide, and the precedential impact such a project may have on future efforts.

127. Such an entitlement might be based in part on the World Charter for Nature, adopted by the U.N. General Assembly in 1982, which provides: "All persons, . . . shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment and shall have access to means of redress when their environment has suffered damage or degradation." *World Charter for Nature*, G.A. Res. 37/7, U.N. GAOR, 37th Sess., Agenda Item 21, U.N. Doc. A/RES/37/7 (1982).

exists between parties claiming an interest in the outcome of a project located in another country and host countries eager for development aid, desiring the immediate benefits they believe a project will confer. Such countries will be quick to claim that national sovereignty prohibits the participation of outside groups and that the interests of outsiders cannot be used to subvert the rights of citizens to development.

While this conflict raises fundamental issues over the proper characterization of participation, it need not prevent current implementation of large scale participatory projects. Clearly, some compromise is required. However, conflicts of interest over territory and its use are common in international law. Zoning regulations are but one example of laws seeking to balance group and individual interests in place and property. Zoning, like development, must confront the fundamental attachment of person to place, and the zoning forum serves as a venue where conflicting preferences are articulated, disputed, and sometimes accommodated.¹²⁸ In some development situations, it may be necessary to submit the interests of local populations to the interests of the larger polity. Each case requires individual consideration, but can receive such attention if a similar forum to the zoning hearing is used in the development context, enabling numerous groups to present their interests.

C. The "Right" of Participation in Development

The need to balance conflicting priorities and interests in the development arena calls into question the nature of those interests. Individuals, ethnic, religious and other groups and countries are but a few of the potential claimants of the right of participation.

Corresponding to the question of who are the holders of a right of participation is the issue of who are the duty bearers. That is, it must be decided whether the right imposes an obligation on local groups, recipient governments, donor governments, or the international community at large. Further, the nature of the obligation must be defined. Participation may entirely impede or block projects which would benefit some groups while harming others. If it is given the status of a right, perhaps it should be included in all projects. Furthermore, it should be balanced with other rights, including the right to development or the right of self-determination of a host country. Finally, if participation is considered a

128. Lea S. VanderVelde, *Local Knowledge, Legal Knowledge, and Zoning Law*, 75 IOWA L. REV. 1057 (1990).

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right, it must be enforced. National systems of redress are likely to be ineffective, raising complex problems of international enforcement.

These questions, like many concerning the definition and implementation of rights, are not capable of easy resolution. However, the parameters of the debate can be determined if the legal grounding of the theory of participation as a right is understood.

1. *Sources of the Right.*—Human rights typically become established as legal norms through a combination of “persistent practice and enunciated concepts.”¹²⁹ The status of participation in development as a right is supported by each of these, although not yet with the level of consistency and determinacy needed to eliminate controversy over its characterization.

(a) *Pronouncements of the Right in Legal Texts.*—Numerous legal texts purport to enunciate the existence of a right to participation in the development process. One of the strongest examples is the text of the Declaration of the Right to Development¹³⁰, which states in part:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in . . . economic, social, cultural and political development . . .

....

The human person is the central subject of development and should be the active participant and beneficiary of the right to development.

....

129. Franck, *supra* note 2, at 55.

130. *Vienna Declaration & Programme of Action*, *supra* note 3. It is important to recognize that this Declaration is itself the subject of considerable controversy. At the recent Vienna Conference on Human Rights, arguments over the right to development threatened to derail the proceedings. See *Human Rights: Vienna Conference Waffles on Big Issues*, Inter Press Service, June 25, 1993, available in LEXIS, Nexis Library, WIRES file. Further, legal theoreticians debate strenuously whether the right to development should be recognized as binding international law. See, e.g., *Report of the Secretary-General, The International Dimensions of the Right to Development as a Human Right in Relation to Other Human Rights Based on International Cooperation*, U.N. ESCOR, 35th Sess., Agenda Item 8, U.N. Doc. E/CN.4/1334 (1979) (“[T]here is a very substantial body of principles . . . demonstrat[ing] the existence of a human right to development”). *Contra* Ian Brownlie, *The Rights of the People in Modern International Law*, in *THE RIGHTS OF THE PEOPLES*, (Crawford ed., 1988); Jack Donnelly, *In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development*, 15 CAL. W. INT’L L.J. 473 (1985).

States should encourage popular participation in all spheres as an important factor in development and in the full recognition of all human rights.¹³¹

While this language clearly recognizes the desirability of participation by target populations, it does not specifically establish it as a "right." Even if the text is read as creating a foundation for claiming right status for participation, it leaves ambiguous issues such as (1) whether individuals, collectives or states are the subjects of the right or the right bearers; (2) whether states or international bodies are individuals, collectives, or states; and (3) who are the corresponding duty bearers — states or international bodies. Furthermore, there is a question as to how the ideal of participation might be given practical effect.

The failure of the Declaration to identify any specific mechanisms to support participation is significant considering that at the time of its drafting, other international agreements contained concrete proposals on the issue which could have been emulated. For example, potential means of encouraging participation are listed in article 4 of the International Labour Organization's Rural Workers' Organizations Convention, pursuant to which states are to "facilitate the establishment and growth . . . of strong and independent organizations of rural workers as an effective means of ensuring . . . participation . . . in economic and social development . . ."¹³² If the drafters of the Declaration intended to solidify the characterization of participation as a right, they could have aided their cause through greater specificity.

Several other multilateral pronouncements issued post-Declaration follow the ILO's example and identify groups and processes to be used to promote participation. In 1990, a conference of 500 participants held in Anrusha, Africa unanimously approved the African Charter for Popular Participation in Development and Transformation.¹³³ The Charter stemmed from a recognition that "the lack of progress in achieving development goals arises in part from lack of appreciation of the role popular participation plays."¹³⁴ With a level of specificity not ordinarily found in such agreements, the Charter calls for explicit mechanisms for encouraging popular participation by governments, community groups, and the international community.¹³⁵ These mechanisms encourage the

131. *Vienna Declaration & Programme of Action*, *supra* note 3, arts. 1, 2, 8(2).

132. *Rural Workers' Organizations Convention*, ILO Convention No. 141, art. 4 (1975).

133. *Note Verbale*, U.N. GAOR, 45th Sess., Agenda Items 12, 82, U.N. Doc. A/45/427 (1990) [hereinafter *African Charter*].

134. *Id.*

135. *Id.*

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inclusion of representatives from the government, trade unions, women's groups, and other interested organizations in evaluations of development projects.¹³⁶

An additional current pronouncement of the right to participate in the development process is contained within the Lome Convention IV,¹³⁷ entered into by the European Economic Community and various African, Caribbean and Pacific states. While prior Conventions¹³⁸ mentioned a right of participation, this Convention contains several explicit and detailed provisions calling for "participation by the population in the design and execution of development operations" and stressing that development policy should be administered in cooperation with "decentralized public authorities, rural and village groupings, cooperatives, firms, and trade unions"¹³⁹

In addition to the explicit declarations of a right to participation found in these texts, the right can be derived from the numerous proclamations of a right to free speech, free press and free assembly.¹⁴⁰ Participation as "voice" can only be exercised where there is the ability to speak freely individually and collectively, and the ability to share information and ideas with others through public and open communications. Although participation under these rights is typically thought of as the right to participate in the process of governance, it has equal validity in the narrower context of the development arena.

The inclusion of explicit declarations of a right to participation in legal texts and the recognition that the rights of free speech, press and assembly support the inclusion of participation in development, show a growing recognition of the need for practical hands-on participation by target groups. Furthermore, these mechanisms are a necessary step

136. *African Charter*, *supra* note 133, art. 25.

137. African, Caribbean and Pacific States-European Economic Community: Final Act, December 15, 1989, 29 ILM 783 (1990) [hereinafter Final Act].

138. The Lome Convention is renewed and revised every five years.

139. Final Act, *supra* note 137, ch. 3, art. 20. Less explicit, but still important provisions provide that the design, appraisal, execution and evaluation of each project or program shall be based on an understanding of and regard for the cultural and social features of the population affected, and recognize that information and communication, training and education are indispensable dimensions of a development concept centered on man.

140. See e.g., *Universal Declaration of Human Rights*, U.N. GAOR 3d. Sess., 67th plen. mtg., at 1, U.N. Doc. A/811 (1948). Article 19 provides that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to . . . seek, receive and impart information and ideas," while article 20 states that "[e]veryone has the right to freedom of peaceful assembly and association." *Id.* See also *European Convention on Human Rights and Fundamental Freedoms*, Nov. 4, 1950, arts. 10, 11, 213 U.N.T.S. 221 ("[e]veryone has the right to freedom of expression . . . [e]veryone had the right to freedom of peaceful assembly and to freedom of association with others").

towards participation's full recognition as a right, although the general lack of specificity in definition of terms and concrete implementation recommendations decrease its determinacy.

(b) *Implementation of the Right in Practice.*—In addition to enunciations of a right to participation in legal texts, the right is supported in practice by donor countries and international aid agencies with varying levels of success. The projects described herein demonstrate a growing commitment to the use of participatory mechanisms, and such efforts are ongoing. Putting participation into practice enforces it as a right. However, efforts to improve the poor track record of participatory project design and implementation “have clearly yet to bear fruit”¹⁴¹ due to the continuing failure to clearly define the parameters of the right and to formalize implementation mechanisms. The failure to routinely use participatory mechanisms stems less from bad intention than from the inherent difficulties in the process. These difficulties, which require a balancing of the need for hierarchy and authority with the need for participation and accountability, will only be resolved through consistent effort on a project by project basis. That they exist can not be permitted to serve as an initial roadblock. Rather, participation should be viewed as a challenge to be confronted directly.

(c) *Utility of the Right.*—The indeterminacy of textual sources and the inconsistency of state practices of implementation argue against according participation in development “right” status. Further, as a practical matter, granting such recognition may do more harm than good. Participatory mechanisms are most effective where they are able to duplicate the levels of discipline, efficiency and unity of purpose typically associated with non-participatory hierarchical structures. Some degree of hierarchy is necessary for efficiency,¹⁴² but if participation is claimed as a right, that necessary degree may be impossible to implement.

Further, if participation is recognized as a right, the debate over its definition may detract from its role in development. If participation is classified as a collective right, planners may argue that individuals need not be consulted. Stating that collective voices must be heard does not solve the problem of proper representation of those voices. Further, if participation is recognized as a right, it may operate to limit the

141. Danilo Turk, Special Rapporteur, *The Realization of Economic, Social and Cultural Rights*, U.N. ESCOR, 44th Sess., Agenda Item 8, at ¶ 177, U.N. Doc. E/CN.4/Sub.2/1992/16 (1992).

142. See generally OLIVER E. WILLIAMSON, *THE ECONOMIC INSTITUTIONS OF CAPITALISM* (N.Y. Free Press 1985).

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effectiveness of projects. The potential for participation varies in response to a wide range of factors, including the size and complexity of the project tasks, the level of skills training and general education held by potential participants, and the degree of inequality and conflict in the community among others. Participation demonstrably increases project success when its role in the process is carefully crafted to fit project constraints. If right holders may demand participation, that crafting may not be possible and therefore efficiency will be lost. In Bank projects, insisting that participation is a "right" may directly decrease its inclusion, as Bank personnel shy away from consideration of any "human rights" in their planning.

More broadly, the difficulties inherent in granting "right" status to participation suggest that to do so would weaken the underlying concept of human rights. "Participation" has not been precisely defined¹⁴³ and can take many forms, including general expressions of interest to project planners, voting on various aspects of projects, and wielding veto power over projects. The indeterminacy of the definition and content of a "right" of participation undermines its legitimacy and limits its power. The absence of any meaningful enforcement mechanism means that only the appearance of legal protection can be given to the "right." This semblance of legal authority, without meaningful foundation, establishes an illusory right and undermines the effectiveness of international human rights law. If all human rights are universal and indivisible, the right of participation should get equal treatment with other rights in the political/civil, economic/social, and cultural categories.

However, the legitimacy and determinacy of these other rights surpasses that of the right of participation.¹⁴⁴ Instead of reducing firmly established rights to a lowest common denominator, it may better serve the international human rights community to recognize that participation has not yet gained that status and therefore, while an important and worthwhile consideration in the development process, should not be permitted to impede other rights. As participatory projects become routine and groups become better able to express their interests, participation may gain the determinacy needed to harden it into a "right." Until that time, classifying it as such diminishes its role in development and the general arena of human rights law.

143. "Participation is an elusive concept, the term is often used ambiguously in development literature." Paul, *supra* note 97, at 81.

144. See Franck, *supra* note 2.

VI. Conclusion

Refusing to classify participation as a right does not mean that it can not be supported and encouraged. Participation is a legitimate and important aspiration and it should be included in development projects wherever and whenever possible. Planners can be required to consider the inclusion of participatory mechanisms in project design, making funding conditional on a showing of such consideration together with a clear plan of how to include participation. If, after such consideration, planners determine participation is not feasible for the project in question, the burden must rest heavily on these planners to support their decision.

The desire to improve the accountability of their project managers, the empirical research demonstrating the connection between economic viability of projects and inclusion of participation, and the increasing focus on other rights, including those of association and expression, have suggested that the world is in need of an implementation of participation in development projects. For this reason, it is incumbent that participation be required by aid givers such as the World Bank.